

JOON H. KIM  
Acting United States Attorney for the  
Southern District of New York  
Attorney for Defendant  
By: REBECCA S. TINIO  
Assistant United States Attorney  
86 Chambers St, 3rd Floor  
New York, NY 10007  
Telephone: (212) 637-2774  
Facsimile: (212) 637-2702  
Email: rebecca.tinio@usdoj.gov

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

LOUIS FLORES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	17 Civ. 00036 (JGK)
	)	
UNITED STATES DEPARTMENT OF	)	ANSWER
JUSTICE,	)	
	)	
Defendant.	)	
	)	

Defendant the United States Department of Justice, by its attorney, Joon H. Kim, Acting United States Attorney for the Southern District of New York, answers the complaint, upon information and belief, as follows:

1. Paragraph 1 of the complaint constitutes Plaintiff's characterization of the nature of this action and the relief requested, to which no response is required. To the extent this paragraph contains factual allegations that may require an answer, Defendant denies the allegations in Paragraph 1 of the complaint.

2. Paragraph 2 of the complaint consists solely of Plaintiff's legal conclusions regarding jurisdiction, to which no response is required. To the extent this paragraph contains

factual allegations that may require an answer, Defendant denies the allegations in Paragraph 2 of the complaint.

3. The first sentence of Paragraph 3 of the complaint consists solely of Plaintiff's legal conclusions regarding venue, to which no response is required. The second sentence of Paragraph 3 of the complaint consists of Plaintiff's characterization of the FOIA request at issue in this matter, to which no response is required. To the extent a response is required to the allegations in the second sentence of Paragraph 3, Defendant respectfully refers the Court to the FOIA request for a complete and accurate statement of its contents.

4. Paragraph 4 of the complaint consists solely of Plaintiff's legal conclusions regarding the relief requested in this action, to which no response is required. To the extent a response is required, Defendant denies that Plaintiff is entitled to the requested relief, or any relief whatsoever.

5. Paragraph 5 of the complaint consists solely of Plaintiff's legal conclusions regarding the relief requested in this action, to which no response is required. To the extent a response is required, Defendant denies that Plaintiff is entitled to the requested relief, or any relief whatsoever.

6. Paragraph 6 of the complaint consists solely of Plaintiff's legal conclusions regarding the relief requested in this action, to which no response is required. To the extent a response is required, Defendant denies that Plaintiff is entitled to the requested relief, or any relief whatsoever.

7. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7 of the complaint.

8. Defendant denies the allegations in Paragraph 8 of the complaint, except avers that Defendant is an executive agency of the United States that has offices located in Washington, D.C.

9. Paragraph 9 of the complaint consists of Plaintiff's characterization of certain allegations relating to this action, to which no response is required. To the extent a response is required, Defendant denies knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph.

10. With respect to the allegations in Paragraph 10 of the complaint, Defendant admits that on April 8, and April 9, 2016, Plaintiff sent emails to the Press Office of the United States Attorney's Office for the Southern District of New York ("SDNY Press Office"), and respectfully refers the Court to Exhibit B to the complaint for a complete and accurate reflection of the contents of those emails.

11. With respect to the allegations in Paragraph 11 of the complaint, Defendant admits that on April 9, 2016, Plaintiff exchanged additional emails with the SDNY Press Office, and respectfully refers the Court to Exhibit C to the complaint for a complete and accurate reflection of the contents of those emails.

12. With respect to the allegations in the first sentence of Paragraph 12 of the complaint, Defendant denies knowledge or information sufficient to form a belief as to the truth of those allegations. With respect to the allegations in the second and third sentences of this paragraph, Defendant denies the allegations, except admits that representatives from the SDNY Press Office had telephone conversations with Plaintiff on some occasions regarding his requests for documents, the exact content of which the SDNY Press Office representatives do not recall,

and also that representatives from the SDNY Press Office at some point discussed with Plaintiff the fact that U.S. Attorney Preet Bharara often used only notes when giving public remarks.

With respect to the allegations in the fourth sentence of Paragraph 12 of the complaint, Defendant admits that on April 21, 2016, Plaintiff exchanged additional emails with the SDNY Press Office, and respectfully refers the Court to Exhibit A to the complaint for a complete and accurate reflection of the contents of those emails.

13. With respect to the allegations in Paragraph 13 of the complaint, Defendant admits that the FOIA request is dated April 25, 2016.

14. Paragraph 14 of the complaint consists of Plaintiff's characterization of the FOIA request, to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the FOIA request for a complete and accurate reflection of its contents.

15. Defendant admits the allegations in Paragraph 15 of the complaint.

16. Defendant admits the allegations in Paragraph 16 of the complaint.

17. With respect to the allegations in Paragraph 17 of the complaint, Defendant admits that the Executive Office for United States Attorneys ("EOUSA") sent Plaintiff two letters dated May 23, 2016, one of which provided information regarding, among other things, FOIA search fees and the fact that Plaintiff did not need to send payment at that time, and the second of which informed Plaintiff that he had not presented a case that would warrant granting expedited processing ahead of others.

18. Paragraph 18 of the complaint contains Plaintiff's own characterization of events that occurred in a separate litigation, to which no response is required. To the extent a response is required, Defendant denies the allegations in this paragraph.

19. With respect to the allegations in Paragraph 19 of the complaint, Defendant admits that EOUSA sent Plaintiff two letters dated August 15, 2016; that one of the letters informed Plaintiff that he did not qualify for a fee waiver; and that the second letter, among other things, informed Plaintiff that EOUSA was currently searching for documents responsive to the FOIA request and estimated that an additional 28 hours would be required to complete the search, and requesting an advance payment of \$1,120.00 to complete the search.

20. With respect to the allegations in Paragraph 20 of the complaint, Defendant admits that on August 15, 2016, Plaintiff sent an email regarding his FOIA request to the SDNY Press Office, and respectfully refers the Court to Exhibit E to the complaint for a complete and accurate reflection of the contents of that email.

21. With respect to the allegations in Paragraph 21 of the complaint, Defendant admits that Plaintiff sent correspondence titled an "Appeal of Constructive Denial of Freedom of Information Act Request," dated August 19, 2016, to the Office of Information Policy, DOJ, and respectfully refers the Court to Exhibit I to the complaint for a complete and accurate statement of its contents.

22. Defendant denies the allegations in Paragraph 22 of the complaint, except admits that EOUSA sent Plaintiff a letter dated November 14, 2016, informing Plaintiff that because EOUSA had not received the requested advance payment within 30 days, Plaintiff's request file had been closed.

23. Defendant incorporates by reference its response to Paragraphs 1-22 above.

24. Paragraph 24 of the complaint sets forth a legal conclusion to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the text of 5 U.S.C. § 552(a)(6)(A)(i) for a true and complete statement of its contents, and denies these allegations to the extent that the statute differs from the allegations contained in this paragraph.

25. Paragraph 25 of the complaint sets forth a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegations in this paragraph.

26. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 26 of the complaint. With respect to the second sentence of this paragraph, Defendant admits that Plaintiff received electronic notifications relating to his appeal on August 19 and 23, 2016, and respectfully refers the Court to Exhibits II and III to the Complaint for a complete and accurate statement of their contents.

27. Paragraph 27 of the complaint sets forth legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in this paragraph.

28. Defendant denies the allegations in Paragraph 28 of the complaint.

29. Defendant denies the allegations in Paragraph 29 of the complaint, except admits that documents responsive to Plaintiff's FOIA request have not yet been released.

30. Paragraph 30 of the complaint sets forth legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in this paragraph.

31. Paragraph 31 of the complaint sets forth a legal conclusion to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the text of 5 U.S.C. § 552(a)(6)(B) for a true and complete statement of its contents, and denies these allegations to the extent that the statute differs from the allegations contained in this paragraph.

32. Paragraph 32 of the complaint sets forth legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in this paragraph.

33. Paragraph 33 of the complaint sets forth a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegations in this paragraph.

34. Paragraph 34 of the complaint sets forth a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegations in this paragraph.

35. Paragraph 35 of the complaint sets forth a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegations in this paragraph.

36. Paragraph 36 of the complaint sets forth a legal conclusion to which no response is required. To the extent a response is required, Defendant respectfully refers the Court to the

text of 5 U.S.C. § 552(a)(4)(B) for a true and complete statement of its contents, and denies these allegations to the extent that the statute differs from the allegations contained in this paragraph.

37. Paragraph 37 of the complaint sets forth a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegations in this paragraph.

38. Paragraph 38 of the complaint sets forth legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in this paragraph.

39. Paragraph 39 of the complaint contains Plaintiff's own characterization of his alleged injuries and legal conclusions, to which no response is required. To the extent a response is required, Defendant denies the allegations in this paragraph.

40. Paragraph 40 of the complaint contains Plaintiff's own characterization of correspondence he sent to the SDNY Press Office on August 15, 2016, as well as legal conclusions, to which no response is required. To the extent a response is required, Defendant denies the allegations in this paragraph except admits that Plaintiff sent an email to the SDNY Press Office on August 15, 2016, and respectfully refers the Court to Exhibit E to the complaint for a complete and accurate statement of the contents of that email.

41. Defendant incorporates by reference its response to Paragraphs 1-40 above.

42. Paragraph 42 of the complaint contains Plaintiff's own characterization of the FOIA request, to which no response is required. To the extent a response is required, Defendant admits that Plaintiff requested expedited processing of the FOIA request and respectfully refers the Court to the FOIA request for a complete and accurate statement of its contents.



43. Paragraph 43 of the complaint sets forth legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in this paragraph.

44. Paragraph 44 of the complaint sets forth legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in this paragraph.

45. Paragraph 45 of the complaint sets forth legal conclusions and Plaintiff's own characterizations of events, to which no response is required. To the extent a response is required, Defendant denies the allegations in this paragraph.

46. Paragraph 46 of the complaint sets forth legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in this paragraph.

47. Defendant incorporates by reference its response to Paragraphs 1-46 above.

48. Paragraph 48 of the complaint contains Plaintiff's own characterization of the FOIA request, to which no response is required. To the extent a response is required, Defendant admits that Plaintiff requested a fee waiver with respect to his FOIA request and respectfully refers the Court to the FOIA request for a complete and accurate statement of its contents.

49. Paragraph 49 of the complaint sets forth legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in this paragraph.

50. Paragraph 50 of the complaint contains Plaintiff's characterizations of correspondence he exchanged with the SDNY Press Office, to which no response is required. To

the extent a response is required, Defendant denies the allegations in this paragraph except admits that the quoted language appears to come from emails exchanged between Plaintiff and the SDNY Press Office on April 9, 2016, and respectfully refers the Court to Exhibit C to the Complaint for a complete and accurate statement of the contents of those emails.

51. Defendant denies the allegations set forth in the first sentence of Paragraph 51 of the complaint. With respect to the next sentence in that paragraph, setting forth a quote from an email that Plaintiff wrote to the SDNY Press Office dated April 9, 2016, Defendant denies the allegations in that sentence, except admits that Plaintiff wrote an email to the SDNY Press Office dated April 9, 2016, and respectfully refers the Court to Exhibit C to the complaint for a complete and accurate statement of the contents of that email. With respect to the next sentence in Paragraph 51, following the quoted material, Defendant denies the allegations set forth in that sentence. The last sentence in this paragraph contains legal conclusions and Plaintiff's own characterizations of events, to which no response is required. To the extent a response is required, Defendant denies the allegations in the last sentence of this paragraph, except admits that EOUSA sent Plaintiff two letters dated August 15, 2016; that one of the letters informed Plaintiff that he did not qualify for a fee waiver; and that the second letter, among other things, informed Plaintiff that EOUSA was currently searching for documents responsive to the FOIA request and estimated that an additional 28 hours would be required to complete the search, and requested an advance payment of \$1,120.00 to complete the search.

52. Paragraph 52 of the complaint sets forth legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in this paragraph.

53. Defendant incorporates by reference its response to Paragraphs 1-52 above.

54. Paragraph 54 of the complaint sets forth legal conclusions and Plaintiff's own characterizations of certain events, to which no response is required. To the extent a response is required, Defendant denies the allegations in the first sentence of this paragraph and denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and respectfully refers the Court to the documents referenced in footnotes 1-5 in the complaint for a complete and accurate statement of their contents.

55. Paragraph 55 of the complaint sets forth legal conclusions and Plaintiff's own characterizations of certain events, to which no response is required. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief about the truth of the allegations in the first sentence of this paragraph and respectfully refers the Court to the documents referenced in footnote 6 of the complaint for a complete and accurate statement of their contents, and denies the allegations in the second sentence of this paragraph.

56. Paragraph 56 of the complaint sets forth legal conclusions and Plaintiff's own characterizations of certain events, to which no response is required. To the extent a response is required, Defendant denies the allegations in the first, second, and fifth sentences of this paragraph, except admits that documents responsive to the FOIA request have not yet been released. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in the third and fourth sentences in this paragraph, and respectfully refers the Court to the document referenced in footnote 7 of the complaint for a complete and accurate statement of its contents.

57. Paragraph 57 of the complaint sets forth legal conclusions and Plaintiff's own characterizations of certain events, to which no response is required. To the extent a response is required, Defendant denies the allegations in the first sentence of this paragraph and respectfully refers the Court to the document referenced in footnote 8 of the complaint for a complete and accurate statement of its contents, and denies knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of this paragraph.

58. Paragraph 58 of the complaint constitutes Plaintiff's requests for relief, to which no response is required. To the extent that a response is required, Defendant denies that Plaintiff is entitled to the requested relief, or any relief whatsoever.

#### AFFIRMATIVE AND/OR OTHER DEFENSES

Any allegations not specifically admitted, denied, or otherwise answered are hereby denied. For further and separate answer, Defendant alleges as follows:

#### FIRST DEFENSE

The complaint should be dismissed in whole or in part for failure to state a claim upon which relief can be granted.

#### SECOND DEFENSE

Plaintiff has not exhausted his administrative remedies.

#### THIRD DEFENSE

Some or all of the documents requested in plaintiff's FOIA request are exempt from disclosure under FOIA. *See* 5 U.S.C. § 552(b).

#### FOURTH DEFENSE

Some or all of the documents requested in plaintiff's FOIA request are exempt from disclosure under the Privacy Act. *See* 5 U.S.C. § 552a.

#### FIFTH DEFENSE

Defendant has exercised due diligence in processing Plaintiff's FOIA request and exceptional circumstances exist that necessitate additional time for Defendant to process the FOIA Request. *See* 5 U.S.C. § 552(a)(6)(C).

#### SIXTH DEFENSE

The complaint should be dismissed to the extent that a search for responsive agency records would significantly interfere with the operation of Defendant's automated systems. *See* 5 U.S.C. § 552(a)(3)(C).

#### SEVENTH DEFENSE

The Court lacks subject matter jurisdiction over plaintiff's requests for relief that exceed the relief authorized by statute under FOIA, 5 U.S.C. § 552.

#### EIGHTH DEFENSE

Plaintiff is not entitled to a full waiver of fees under 5 U.S.C. § 552(a)(4)(A)(iii).

#### NINTH DEFENSE

Plaintiff is not entitled to expedited processing under 5 U.S.C. § 552(a)(6)(E).

#### TENTH DEFENSE

Plaintiff is not entitled to declaratory relief. *See* 5 U.S.C. § 552(a)(4)(B).

ELEVENTH DEFENSE

Plaintiff is not entitled to relief under the Declaratory Judgment Act (“DJA”) because, among other reasons, the complaint fails to state a claim upon which relief can be granted under the Declaratory Judgment Act.

TWELFTH DEFENSE

One or more of Plaintiff’s claims is barred by the doctrine of mootness.

THIRTEENTH DEFENSE

Plaintiff is not entitled to relief in the form of sanctions and/or penalties.

FOURTEENTH DEFENSE

Plaintiff is not entitled to attorney’s fees or costs.

Dated:           New York, New York  
                  March 20, 2017

Respectfully submitted,  
JOON H. KIM  
Acting United States Attorney  
*Attorney for Defendant*

By: /s/ Rebecca S. Tinio  
REBECCA S. TINIO  
Assistant United States Attorney  
86 Chambers Street, 3<sup>rd</sup> Floor  
New York, New York 10007  
Telephone: (212) 637-2774  
Facsimile: (212) 637-2702  
E-mail:rebecca.tinio@usdoj.gov

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

_____ LOUIS FLORES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	17 Civ. 00036 (JGK)
	)	
UNITED STATES DEPARTMENT OF	)	CERTIFICATE OF SERVICE
JUSTICE,	)	
	)	
Defendant.	)	
_____	)	

I, Rebecca S. Tinio, an Assistant United States Attorney for the Southern District of New York, hereby certify that on March 20, 2017, I caused copies of Defendant's Answer to the Complaint, dated March 20, 2017, to be sent to the following address via U.S. Mail:

Louis Flores  
3421 77<sup>th</sup> St. Apt. 406  
Jackson Heights, NY 11372

I also caused a copy of this document to be sent on March 20, 2017, to the following email address, which has previously been used by Plaintiff for communications with counsel for the Government:

[louis.flores@progressqueens.com](mailto:louis.flores@progressqueens.com)

Dated: New York, New York  
March 20, 2017

/s/ Rebecca S. Tinio  
REBECCA S. TINIO  
Assistant United States Attorney